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GLORIA STITT, RONALD STITT, JUDI  
SHATZER, MARK ZIRLOTT, and TERRI  
LOUISE ZIRLOTT, individually, and on  
behalf of other members of the public  
similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GLORIA STITT, RONALD STITT, JUDI  
SHATZER, MARK ZIRLOTT, and  
TERRI LOUISE ZIRLOTT, individually,  
and on behalf of other members of the  
general public similarly situated,

Plaintiffs,

vs.

CITIBANK, N.A., a national association,  
and CITIMORTGAGE, INC., a New York  
corporation,

Defendants.

Case Number: **CV 12 3892 EDL**

**CLASS ACTION COMPLAINT FOR:**

- (1) Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c))
- (2) Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(d));
- (3) Unjust Enrichment; and
- (4) Fraud

**Jury Trial Demanded**

1 For their complaint against Citibank, N.A., and CitiMortgage, Inc. (collectively  
2 “Defendants”), Plaintiffs Gloria Stitt, Ronald Stitt, Judi Shatzer, Mark Zirlott, and Terri  
3 Louise Zirlott (“Plaintiffs”), individually, and on behalf of all other members of the  
4 public similarly situated, based on information and belief, allege as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiffs’ claims against Defendants in this action were originally brought as  
7 part of the action captioned as *Bias et al. v. Wells Fargo & Company et al.*, case no. 4:12-  
8 cv-00664-YGR (N.D. Cal., filed Feb. 10, 2012). However, by Order dated July 13, 2012,  
9 this Court, the Honorable Yvonne Gonzalez Rogers presiding, found, on the Court’s own  
10 motion, that the claims with respect to the Defendants in this action were not properly  
11 joined in a single action with the claims against the other defendants in the *Bias* action.  
12 As a result, the Court ordered Plaintiffs “to re-file their claims against [Defendants as an]  
13 additional, separate action.”<sup>1</sup> Accordingly, consistent with the Court’s order, Plaintiffs  
14 hereby bring this separate action against Citibank, N.A., and CitiMortgage, Inc.

15 2. This case concerns fraudulent practices committed by Defendants in  
16 connection with their home mortgage loan servicing businesses. Taking advantage of  
17 economic downturn and the increasing number of loans in default, Defendants formed an  
18 enterprise to service these loans according to uniform practices designed to maximize fees  
19 assessed on borrowers’ accounts when they are behind on their payments. Consistent  
20 with these practices, Defendants use automated mortgage loan management systems,  
21 made up of an enterprise of subsidiaries, inter-company departments, divisions, and third-  
22 party “property preservation” vendors, to engage in a scheme to conceal the unlawful  
23 assessment of improperly marked-up or unnecessary third party fees for default-related  
24 services, cheating borrowers who can least afford it.

25  
26 <sup>1</sup> See *Bias et al. v. Wells Fargo & Company et al.*, N.D. Cal., case no. 4:12-cv-00664-YGR, *Order*  
27 *Granting in Part and Denying in Part Motion of Defendants Wells Fargo & Company and Wells Fargo*  
28 *Bank, N.A. to Sever and Transfer, and Severing Claims as to Other Defendants on the Court’s Own*  
*Motion*, July 13, 2012 (Dkt. No. 59).

1           3.     More specifically, when home mortgage borrowers get behind on their  
2 payments and go into "default," Defendants assess fees on borrowers' accounts for  
3 various default-related services, typically performed by third parties, purportedly designed  
4 to protect the lender's interest in the property. However, Defendants are not permitted to  
5 mark-up the fees for such services to earn a profit. Nor are Defendants permitted to assess  
6 borrowers' accounts for default-related service fees that are unnecessary. Nevertheless, as  
7 discussed in detail below, using false pretenses to conceal the truth from borrowers, that is  
8 precisely what Defendants do.

9           4.     In effect, to generate hefty profits, the lending industry has substituted  
10 inflated interest rates with inflated fees. Defendants formed enterprises, associations of  
11 subsidiaries, affiliated companies, and "property preservation" vendors, and designed  
12 schemes to disguise hidden, marked-up, or unnecessary fees so that they could earn  
13 additional, undisclosed profits. Through these unlawful enterprises, Defendants mark-up  
14 the fees charged by vendors, often by 100% or more, and then, without disclosing the  
15 mark-up, assess borrowers' accounts for the hidden profits. Furthermore, in connection  
16 with their schemes, Defendants also have a practice of routinely assessing fees for default-  
17 related services, even when they are unnecessary. Employing this strategy, Defendants  
18 are able to quietly profit from default-related service fees at the expense of struggling  
19 consumers.

20           5.     Many borrowers reasonably believe the lender from whom they obtained  
21 their mortgage will hold and service their loan until it is paid off. Instead, however,  
22 through relatively recent mortgage industry practices, such as securitization and the sale  
23 of mortgage backed securities, that is often not the case. In today's market, loans and the  
24 rights to service them are bought and sold at will, multiple times over.

25           6.     A borrower's relationship is typically with the mortgage servicer rather than  
26 the lender who originated the loan. CitiMortgage, Inc. is one of the largest mortgage  
27 servicers in the United States. As a mortgage servicer, CitiMortgage, Inc. is responsible  
28 for the day-to-day management of loan accounts, including handling customer inquiries,

1 collecting and crediting loan payments, sending default notices to delinquent borrowers,  
2 negotiating loan modifications, and directing foreclosure activities, including engaging the  
3 services of foreclosure counsel, even if the foreclosure is brought in the name of the  
4 owner of the loan, rather than the servicer.

5 7. Borrowers depend on their mortgage servicers to handle servicing-related  
6 tasks accurately and with skill. Because financial institutions like Citibank, N.A. who  
7 generate loan servicing revenue through operating subsidiaries like CitiMortgage, Inc., do  
8 not profit directly from interest payments made by borrowers, rather than ensuring that  
9 borrowers stay current on their loans, Defendants are more concerned with generating  
10 revenue from fees assessed against the mortgage accounts they service. According to one  
11 member of the Board of Governors of the Federal Reserve System, “a foreclosure almost  
12 always costs the investor [who owns the loan] money, but [it] may actually earn money  
13 for the servicer in the form of fees.”<sup>2</sup>

14 8. Financial institutions like Defendants see opportunity where investors see  
15 failure because borrowers are captives to companies who service their loans.  
16 Accordingly, when borrowers go into default and Defendants unilaterally decide to  
17 instruct third parties to perform default-related services, borrowers have no option but to  
18 accept Defendants’ choice of providers.

19 9. Taking advantage of these circumstances, the Defendants formed an  
20 enterprise with their respective subsidiaries, affiliates, and “property preservation”  
21 vendors, and then, developed a uniform practice of unlawfully marking up default-related  
22 fees charged by third parties and assessing them against borrowers’ accounts so that  
23 Defendants can earn undisclosed profits in connection with these services.

24 10. Defendants are aware that it is improper to mark-up the fees assessed on  
25

26 <sup>2</sup> See Sarah Bloom Raskin, Member Board of Governors of the Federal Reserve System, *Remarks at the*  
27 *National Consumer Law Center’s Consumer Rights Litigation Conference*, Boston Massachusetts, Nov.  
28 12, 2010, available at [www.federalreserve.gov/newsevents/speech/raskin20101112a.htm](http://www.federalreserve.gov/newsevents/speech/raskin20101112a.htm) (last visited Jan. 23, 2012).



1 borrowers' accounts for default-related services. Therefore, Defendants fraudulently  
 2 conceal these fees on borrowers' accounts, omitting any information about Defendants'  
 3 additional profits, by identifying them on mortgage statements with cryptic descriptions,  
 4 such as "Delinquency Expenses."

5 11. Indeed, Defendants' practices are designed to avoid detection even when  
 6 examined in bankruptcy proceedings. As one court has explained, "[l]enders have  
 7 apparently been operating under the assumption that the fees and costs in their proofs of  
 8 claim are invulnerable to challenge because debtors lack the sophistication, the debtors'  
 9 bar lacks the financial motivation, and bankruptcy courts lack the time."<sup>3</sup> "[T]he Court  
 10 believes that certain members of the mortgage industry are *intentionally* attempting to  
 11 game the system by requesting undocumented and potentially excessive fees."<sup>4</sup>

12 12. The rampant abuses by mortgage servicers have led federal regulators to  
 13 enter into numerous Consent Orders, but according to Mark Pearce, Director, Division of  
 14 Depositor and Consumer Protection, Federal Deposit Insurance Corporation, "these  
 15 consent orders do not fully identify and remedy past errors in mortgage-servicing  
 16 operations of large institutions; in fact, the scope of the interagency review did not  
 17 include a review of . . . the fees charged in the servicing process. Much work remains to  
 18 identify and correct past errors and to ensure that the servicing process functions  
 19 effectively, efficiently, and fairly going forward."<sup>5</sup> Moreover, the Consent Orders do not  
 20 reach the type of conduct at issue here.

21 13. Plaintiffs bring this action, seeking injunctive relief and damages on behalf of  
 22

23 <sup>3</sup> *In re: Prevo*, 394 B.R. 847, 848 (Bankr. S.D. Tex. 2008).

24 <sup>4</sup> *Id.* at 851 (emphasis added).

25 <sup>5</sup> See Mark Pearce, Director, Division of Depositor and Consumer Protection, Federal Deposit Insurance  
 26 Corporation, *Mortgage Servicing: An Examination of the Role of Federal Regulators in Settlement*  
 27 *Negotiations and the Future of Mortgage Servicing Standards*, before the Subcommittees on Financial  
 28 Institutions and Consumer Credit, and Oversight and Investigations Committee on Financial Services,  
 U.S. House of Representatives, July 7, 2011, available at  
<http://financialservices.house.gov/UploadedFiles/070711pearce.pdf> (last visited, Feb. 1, 2012).

1 themselves and the thousands of borrowers who have been victimized by the Defendants'  
2 uniform schemes.

### 3 JURISDICTION AND VENUE

4 14. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(d)(2). The matter  
5 in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000  
6 and is a class action in which members of the class of plaintiffs are citizens of states  
7 different from Defendants. Further, greater than two-thirds of the members of the Class  
8 reside in states other than the states in which Defendants are a citizens.

9 15. This Court also has jurisdiction over this matter under 28 U.S.C. §§ 1331,  
10 1961, 1962 and 1964. This Court has personal jurisdiction over Defendants under 18  
11 U.S.C. §1965. In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental  
12 jurisdiction over the state law claims because all of the claims are derived from a common  
13 nucleus of operative facts and are such that Plaintiffs ordinarily would expect to try them  
14 in one judicial proceeding.

15 16. Venue lies within this judicial district under 28 U.S.C. § 1391(b)(1) and  
16 (c)(2) because Defendants' contacts are sufficient to subject them to personal jurisdiction  
17 in this District, and therefore, Defendants reside in this District for purposes of venue, or  
18 under 28 U.S.C. § 1391(b)(2) because certain acts giving rise to the claims at issue in this  
19 Complaint occurred, among other places, in this District.

### 20 Intradistrict Assignment

21 17. Consistent with Northern District of California Civil Local Rule 3-5(b),  
22 assignment to the San Francisco or Oakland Division is appropriate under Civil Local  
23 Rules 3-2(c) and 3-2(d), because acts giving rise to the claims at issue in this Complaint  
24 occurred, among other places, in this District, in the San Francisco and Oakland.

**PARTIES**

18. Plaintiff Gloria Stitt is an individual and a citizen of New York.

19. Plaintiff Ronald Stitt is an individual and a citizen of New York.

20. Plaintiff Judi Shatzer is an individual and a citizen of Maryland.

21. Plaintiff Mark Zirlott is an individual and a citizen of Alabama.

22. Plaintiff Terri Louise Zirlott is an individual and a citizen of Alabama.

23. Defendant Citibank, N.A. is a national bank organized and existing as a national association under the National Bank Act, 12 U.S.C. §§ 21 *et seq.*, with its principal place of business in New York, New York, and is a subsidiary of Citicorp, and is the parent corporation of CitiMortgage, Inc.

24. Defendant CitiMortgage, Inc. is a subsidiary of Citibank, N.A., and is a New York corporation, with its principal place of business in O'Fallon, Missouri.

25. Whenever, in this Complaint, reference is made to any act, deed, or conduct of Defendants committed in connection with the enterprise, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of their officers, directors, agents, employees or representatives, each of whom was actively engaged in the management, direction, control or transaction of the ordinary business and affairs of Defendants and the enterprise.

26. Plaintiffs are informed and believe, and based thereon, allege that, at all material times herein, each Citi defendant, Citibank, N.A. and CitiMortgage, Inc. (collectively, "Citi"), was the agent, servant, or employee of, and acted within the purpose, scope, and course of said agency, service, or employment, and with the express or implied knowledge, permission, and consent of the other Citi defendant, and ratified and approved the acts of the other Citi defendant.

27. Citibank, N.A. exercises specific and financial control over the operations of CitiMortgage, Inc., and it dictates the policies and practices of CitiMortgage, Inc. Citibank, N.A. also exercises power and control over the specific activities at issue in this lawsuit, and it is the ultimate recipient of the ill-gotten gains described herein. Citigroup,

1 Inc., the parent company of both Citibank, N.A. and CitiMortgage, Inc., represents that it  
2 brings "the power of one Citi to our Citi Smith Barney, Citibank, CitiMortgage, Citi  
3 Cards, and Student Loan clients" by "Serving clients as one company."<sup>6</sup> The fraudulent  
4 scheme at issue in this case was organized by executives working at the highest levels of  
5 Citibank, N.A. and CitiMortgage, Inc., and carried out by both executives and subordinate  
6 employees.

### 7 **FACTUAL BACKGROUND**

8 28. America's lending industry is in turmoil, and the lending community has  
9 divorced itself from the borrowers it once served. Traditionally, when people wanted to  
10 borrow money, they went to a bank or a "savings and loan." Banks loaned money and  
11 borrowers promised to repay the bank, with interest, over a specific period of time. The  
12 originating bank kept the loan on its balance sheet, and serviced the loan -- processing  
13 payments, and sending out applicable notices and other information -- until the loan was  
14 repaid. The originating bank had a financial interest in ensuring that the borrower was  
15 able to repay the loan.

16 29. Today, however, the process has changed. Mortgages are now packaged,  
17 bundled, and sold to investors on Wall Street through what is referred to in the financial  
18 industry as mortgage backed securities or MBS. This process is called securitization.  
19 Securitization of mortgage loans provides financial institutions like Defendants with the  
20 benefit of immediately being able to recover the amounts loaned. Securitization  
21 essentially eliminates the bank's risk from potential default. But, by eliminating the risk  
22 of default, mortgage backed securities have disassociated the lending community from  
23 borrowers. Numerous unexpected consequences have resulted from the divide between  
24 lenders and borrowers.

25 30. Among other things, securitization has created an industry of companies in  
26

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27 <sup>6</sup> See Citigroup, Inc. 2006 Annual Report, available at  
28 [http://www.citigroup.com/citi/investor/quarterly/2007/ar06c\\_en.pdf?ieNocache=809](http://www.citigroup.com/citi/investor/quarterly/2007/ar06c_en.pdf?ieNocache=809) (last visited July 23,  
2012).



1 the lending industry like Defendants, who no longer make money primarily from interest  
 2 on the loans they originate. Thus, lenders no longer have the financial interest in the  
 3 repayment of loans that they once did. Instead, financial institutions like Defendants,  
 4 through their network of subsidiaries, operating entities and divisions, service or  
 5 administer mortgages for hedge funds and investment houses who own the loans. Rather  
 6 than earn income from the interest on these loans, financial institutions like Defendants  
 7 are paid a fee for their loan administration services.

8 31. Additionally, under agreements with investors (pooling and service  
 9 agreements), loan servicers like Defendant CitiMortgage, Inc. assess fees on borrowers'  
 10 accounts for default-related services in connection with their administration of borrowers'  
 11 loans. These fees include Broker's Price Opinion fees and appraisal fees. Defendants'  
 12 collection of these fees, however, exemplifies how America's lending industry has run off  
 13 the rails.

14 32. As one Member of the Board of Governors of the Federal Reserve System  
 15 has explained, "[w]hile an investor's financial interests are tied more or less directly to the  
 16 performance of a loan, the interests of a third-party servicer are tied to it only indirectly, at  
 17 best. The servicer makes money, to oversimplify it a bit, by maximizing fees earned and  
 18 minimizing expenses while performing the actions spelled out in its contract with the  
 19 investor. . . . The broad grant of delegated authority that servicers enjoy under pooling  
 20 and servicing agreements (PSAs), combined with an effective lack of choice on the part of  
 21 consumers, creates an environment ripe for abuse."<sup>7</sup>

22 33. For financial institutions like Defendants, who are determined to maximize  
 23 the money they earn for servicing loans, the right to charge servicing fees has opened the  
 24 door to a world of exploitation. As a result of the disassociation between loan servicers  
 25

26 <sup>7</sup> See Sarah Bloom Raskin, Member Board of Governors of the Federal Reserve System, *Remarks at the*  
 27 *National Consumer Law Center's Consumer Rights Litigation Conference*, Boston Massachusetts, Nov.  
 28 12, 2010, available at [www.federalreserve.gov/newsevents/speech/raskin20101112a.htm](http://www.federalreserve.gov/newsevents/speech/raskin20101112a.htm) (last visited Jan. 23, 2012).

1 and the monies generated from the interest borrowers pay on their loans, Defendants have  
2 been incentivized to find other ways to grow their profits.

3 34. Defendants, with their subsidiaries, affiliated companies, intercompany  
4 divisions, and third-party "property preservation" vendors, formed an unlawful enterprise  
5 and decided to game the system, under the guise of collecting default-related service fees,  
6 charged by third parties, and then, they sought to increase mortgage servicing revenues by  
7 fraudulently concealing marked-up or unnecessary fees assessed on borrowers' accounts.

8 35. In short, as explained by Adam J. Levitin, Associate Professor of Law at the  
9 Georgetown University Law Center, in testimony to the United States House Financial  
10 Services Committee, Subcommittee on Housing and Community Opportunity, "Servicers'  
11 business model also encourages them to cut costs wherever possible, even if this involves  
12 cutting corners on legal requirements, and to lard (sic) on junk fees and in-sourced  
13 expenses at inflated prices."<sup>8</sup>

#### 14 **DEFENDANTS' AUTOMATED LOAN SERVICING PRACTICES**

15 36. To maximize profits, Defendants assign the complex task of administering  
16 these millions of loans to computer software programs. The software programs are  
17 designed to manage borrowers' accounts and assess fees, according to protocols and  
18 policies designed by the executives at Citibank, N.A. and its operating subsidiary,  
19 CitiMortgage, Inc.

20 37. Citi automates its loan servicing business primarily through two computer  
21 software programs, which are called CitiLink and Maestro. CitiLink and Maestro are  
22 proprietary to Citi. Citi also uses a program called DRI, which is a case management,  
23 communications, and recordkeeping software system for default-related matters.

24 38. CitiLink and Maestro contain information relating to the origination,  
25

26 <sup>8</sup> See Adam J. Levitin, *Robo-Singing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage*  
27 *Servicing*, before the House Financial Services Committee, Subcommittee on Housing and Community  
28 Opportunity, Nov. 18, 2010, available at  
<http://financialservices.house.gov/Media/file/hearings/111/Levitin111810.pdf> (last visited Feb. 1, 2012).

1 payment, interest, and fees concerning mortgages serviced by CitiMortgage, Inc.  
2 Management of payment information for loans serviced by Citi is automated by CitiLink  
3 and Maestro. When borrowers send payment checks to Citi, the payments are  
4 automatically loaded into CitiLink or Maestro. Payments made over the phone or on the  
5 Internet are automatically fed into CitiLink or Maestro as well.

6 39. Based on parameters inputted into these programs, Citi's computer systems  
7 automatically implement decisions about how to manage borrowers' accounts based on  
8 internal software logic. Among other things, if a loan in Citi's systems is past due, the  
9 internal software logic in CitiLink and Citi's other loan management programs is designed  
10 to automatically assess late fees, default-related service fees, and other charges against  
11 borrowers' accounts.

12 **MARKED-UP AND UNNECESSARY THIRD PARTY FEES**  
13 **FOR DEFAULT-RELATED SERVICES**

14 40. In their loan servicing operations, Defendants follow a strategy to generate  
15 fraudulently concealed default-related fee income. Rather than simply obtain default-  
16 related services directly from independent third-party vendors, and charge borrowers for  
17 the actual cost of these services, Defendants assess borrowers' accounts for services that  
18 are unnecessary and they unlawfully add additional, undisclosed profits on to the third  
19 party charges before they are assessed on borrowers' accounts.

20 41. Defendants' scheme works as follows. Defendants order default-related  
21 services from their subsidiaries and affiliated companies, who, in turn, obtain the services  
22 from third-party vendors. The third-party vendors charge Defendants for their services.  
23 Defendants, in turn, assess borrowers a fee that is significantly marked-up from the third-  
24 party vendors' actual fees for the services. As a result, even though the mortgage market  
25 has collapsed, and more and more borrowers are falling into delinquency, Defendants  
26 continue to earn substantial profits by assessing undisclosed, marked-up fees for default-  
27 related services on borrowers' accounts.  
28

1       42. The mortgage contract between a lender and a borrower generally consists of  
2 two documents: the promissory note ("Note") and the mortgage or deed of trust  
3 ("Security Instrument"). The mortgage contracts serviced by Defendants are substantially  
4 similar because they conform to the standard Fannie Mae/Freddie Mac form contract.  
5 These contracts contain disclosures regarding what occurs if borrowers default on their  
6 loans. The Security Instrument discloses to borrowers that, in the event of default, the  
7 loan servicer will:

8               pay for whatever is reasonable or appropriate to protect the note  
9 holder's interest in the property and rights under the security  
10 instrument, including protecting and/or assessing the value of  
11 the property, and securing and/or repairing the property.

12       43. The Security Instrument further discloses that any such amounts disbursed by  
13 the servicer shall become additional debt of the borrower secured by the Security  
14 Instrument and shall bear interest at the Note rate from the date of disbursement. The  
15 Note further discloses that the note holder:

16               will have the right to be paid back by [the borrower] for all of its  
17 costs and expenses in enforcing this Note to the extent not  
18 prohibited by applicable law. Those expenses include, for  
19 example, reasonable attorneys' fees.

20 Thus, the mortgage contract discloses to borrowers that the servicer will pay for default-  
21 related services when necessary, and will be reimbursed by the borrower. Nowhere is it  
22 disclosed to borrowers that the servicer may mark-up the actual cost of those services to  
23 make a profit, nor does it permit such fees to be assessed on borrowers' accounts when  
24 they are unnecessary.  
25  
26  
27  
28



1        44. Broker's Price Opinions ("BPOs") are a significant category of default-  
2 related service fees that, in furtherance of Defendants' unlawful enterprises, are assessed  
3 on borrowers' accounts with substantial, undisclosed mark-ups, fraudulently generating  
4 revenue in the loan servicing business.

5        45. As discussed above, by charging marked-up fees for BPOs, Defendants  
6 violate the disclosures made to borrowers. Furthermore, the wrongful nature of the  
7 marked-up fees is demonstrated by the fact that Defendants conceal the marked-up profits  
8 assessed on borrowers' accounts.

9        46. Although Defendants assess fees for BPOs on borrowers' accounts in  
10 amounts ranging from approximately \$85 to \$105, as of December 2010, under Fannie  
11 Mae guidelines, the maximum reimbursable rate for an exterior BPO is \$80,<sup>9</sup> and in  
12 practice, the actual cost is much less. According to the National Association of BPO  
13 Professionals, the actual cost of a BPO may be as little as \$30.<sup>10</sup>

14        47. Defendant Citibank, N.A., its subsidiary, defendant CitiMortgage, Inc., and  
15 their "property preservation" vendors, and the real estate brokers who provide BPOs for  
16 Citi, formed an enterprise and devised a scheme to defraud borrowers and obtain money  
17 from them by means of false pretenses.

18        48. CitiMortgage, Inc. is the fourth-largest servicer in the United States.  
19 CitiMortgage, Inc. services approximately 4 million loans, and approximately 20% of  
20 those loans concern properties in California.

21        49. Plaintiffs are informed and believe, and on that basis, allege that using the  
22 enterprise and Citi's automated mortgage loan management system, Citi conceals marked-  
23 up or unnecessary fees for default-related services on borrowers accounts, by identifying  
24 the charges only as "Delinquency Expenses" on borrowers' statements. Under the this  
25

26 <sup>9</sup> See Fannie Mae, *Broker Price Opinion Providers and Pricing Structure*, available at  
<https://efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ntce121710a.pdf> (last visited Feb. 1, 2012).

27 <sup>10</sup> See National Association of BPO Professionals (NABPOP), *Broker Price Opinion – BPO Brief*,  
28 available at <http://www.nabpop.org/Advocacy-BPOBrief-2.php> (last visited Feb. 2, 2012).

1 category of charges, Citi assesses fees for BPOs on borrowers' accounts, in amounts  
2 ranging from \$84 to \$105, when in fact, on information and belief, the actual cost of each  
3 BPO is approximately \$50 or less.

4 50. Plaintiffs are informed and believe, and on that basis, allege that under the  
5 "Delinquency Expenses" category on borrowers' statements, Citi also assesses  
6 unnecessary fees for property inspections. In order to generate profits from these fees,  
7 Citi's automated loan management system is set up to order property inspections and  
8 assess fees against borrowers when they are a certain number of days late on their  
9 mortgage, regardless of whether the assessment of such fees is necessary. Although such  
10 inspections purportedly are conducted to guard against property loss, Citi's practices are  
11 designed to ensure that these fees are charged to as many accounts as possible, even if the  
12 inspections are unnecessary.

13 51. Plaintiffs are informed and believe, and on that basis, allege that guidelines  
14 inputted into Citi's loan management software system automatically trigger property  
15 inspections if a loan is past due by a certain number of days. Plaintiffs are informed and  
16 believe, and on that basis, allege that after a borrower's account is past due by a set  
17 number of days, as inputted into the software, Citi's computer automatically generates a  
18 work order for a property inspection without human intervention. Moreover, so long as a  
19 borrower's account is past due by the requisite number of days inputted into the loan  
20 management software, Citi's system automatically continues to order inspections,  
21 regardless of whether they are necessary.

22 52. Plaintiffs are informed and believe, and on that basis, allege that even if the  
23 property inspections were properly performed and actually reviewed by someone at the  
24 bank, Citi's continuous assessment of fees for these inspections on borrowers accounts is  
25 still improper because of the frequency with which they are performed. If the first  
26 inspection report shows that the property is occupied and in good condition, it is  
27 unnecessary and inappropriate for Citi's system to automatically continue to order  
28 monthly inspections. Nothing in the reports justifies continued monitoring.

1        53. As a result of Citi's unlawful enterprise, hundreds of thousands of  
2 unsuspecting borrowers are cheated out of millions of dollars.

3                                **BORROWERS SUFFER HARM**  
4                                **AS A RESULT OF DEFENDANTS' PRACTICES**

5        54. In addition to the direct monetary damages caused to borrowers, in the form  
6 of the difference between the actual cost of the services provided and the marked-up fees  
7 assessed on borrowers' accounts, borrowers suffer other, less obvious injuries as a result  
8 of the practices described herein.

9        55. The assessment of these marked-up fees can make it impossible for  
10 borrowers to become current on their loan. Charges for default-related services can add  
11 hundreds or thousands of dollars to borrowers' loans over time, driving them further into  
12 default.

13        56. When borrowers get behind on their mortgage, and fees for these default-  
14 related services are stacked on to the past-due principal and interest payments,  
15 Defendants' practices make it increasingly difficult for borrowers to ever bring their loan  
16 current. Even if borrowers pay the delinquent principal and interest payments, the  
17 marked-up fees for default-related services ensure that borrowers stay in default. After  
18 paying delinquent principal and interest, although the next payment comes in on time,  
19 often through automatic payment deductions from borrowers' bank accounts, part of the  
20 payment is applied to the fees first, so there is not enough to cover the entire monthly  
21 payment. This makes that payment late, creating a cascade of more fees, and more  
22 arrears, that keeps borrowers in delinquency. By the time borrowers are aware,  
23 Defendants are threatening to foreclose unless a huge payment is made, and the weight of  
24 these unnecessary fees drops borrowers into a financial abyss.

25        57. As a result of Defendants' practices, which force borrowers to move deeper  
26 into default, borrowers suffer damage to their credit score. Defendants provide  
27 information about borrowers' payment history to credit reporting companies, including  
28 whether they have been late with a payment or missed any payments. By keeping

1 borrowers in default with these practices, Defendants affect whether borrowers can get a  
2 loan in the future – and what borrowers’ interest rate will be on such loans.

3 58. Additionally, as a result of Defendants’ practices, which force borrowers to  
4 move deeper into default, borrowers are driven into foreclosure.

5 **PLAINTIFFS’ CLAIMS AGAINST CITI**

6 59. Plaintiff Gloria Stitt is a resident of New York County, New York.

7 60. Plaintiff Ronald Stitt is a resident of New York County, New York.

8 61. Plaintiffs Gloria and Ronald Stitt have a mortgage serviced by CitiMortgage.

9 62. Citi continually assessed fees for default-related services, including property  
10 inspections, on the mortgage account of Plaintiffs Gloria and Ronald Stitt, as early as  
11 April 19, 2010. On mortgage statements provided to Plaintiffs Gloria and Ronald Stitt,  
12 such fees were identified as “Delinquency Expenses.” Although some mortgage  
13 statements stated, “Delinquency expenses are third-party expenses such as property  
14 inspection fees, property preservation costs, appraisal costs, and attorneys fees incurred by  
15 CMI as a result of default,” Citi did not adequately disclose the true nature of the fees  
16 assessed against the account of Plaintiffs Gloria and Ronald Stitt. Mortgage statements  
17 provided by Citi did not disclose that the such fees may contain mark-ups, nor did they  
18 state exactly which of those categories of fees were assessed against the account of  
19 Plaintiffs Gloria and Ronald Stitt, and they did not state if the fees identified as  
20 “Delinquency Expenses” included more than one category of fee. Additionally, by  
21 merely stating, “such as,” and giving a list of potential types of fees, Citi leaves borrowers  
22 unable to know if there are other categories of fees that are assessed under the  
23 “Delinquency Expenses” description.

24 63. Defendants alone maintain a complete accounting of all fees assessed and  
25 paid, and the details of each and every fee assessed and paid cannot be alleged with  
26 complete precision without access to Defendants’ records. Nevertheless, Plaintiffs are  
27 informed and believe, and on that basis allege, that Plaintiffs Gloria and Ronald Stitt paid  
28 some or all of the unlawful fees assessed on their account.



1        64. Plaintiff Shatzer is a resident of Carroll County, Maryland.

2        65. Plaintiff Shatzer has a mortgage serviced by CitiMortgage.

3        66. Citi continually assessed fees for default-related services, including property  
4 inspections, on the mortgage account of Plaintiff Shatzer. From January 2009 to February  
5 2012, Citi assessed fees for more than 30 property inspections. On mortgage statements  
6 provided to Plaintiff Shatzer, such fees were identified as "Delinquency Expenses."  
7 Although some mortgage statements stated, "Delinquency expenses are third-party  
8 expenses such as property inspection fees, property preservation costs, appraisal costs,  
9 and attorneys fees incurred by CMI as a result of default," Citi did not adequately disclose  
10 the true nature of the fees assessed against Plaintiff Shatzer's account. Mortgage  
11 statements provided by Citi did not disclose that the such fees may contain mark-ups, nor  
12 did they state exactly which of those categories of fees were assessed against Plaintiff  
13 Shatzer's account, and they did not state if the fees identified as "Delinquency Expenses"  
14 included more than one category of fee. Additionally, by merely stating, "such as," and  
15 giving a list of potential types of fees, Citi leaves borrowers unable to know if there are  
16 other categories of fees that are assessed under the "Delinquency Expenses" description.

17        67. Defendants alone maintain a complete accounting of all fees assessed and  
18 paid, and the details of each and every fee assessed and paid cannot be alleged with  
19 complete precision without access to Defendants' records. Nevertheless, Plaintiffs are  
20 informed and believe, and on that basis allege, that Plaintiff Shatzer paid some or all of  
21 the unlawful fees assessed on her account.

22        68. Plaintiff Mark Zirlott is a resident of Mobile County, Alabama

23        69. Plaintiff Terri Louise Zirlott is a resident of Mobile County, Alabama.

24        70. Plaintiffs Mark and Terri Zirlott have have a mortgage serviced by  
25 CitiMortgage.

26        71. Citi continually assessed fees for default-related services, including property  
27 inspections, on the mortgage account of Plaintiffs Mark and Terri Louise Zirlott, as early  
28 as April 19, 2009. From April 2009 to March 2010, Citi assessed fees for twelve property

1 inspections. On mortgage statements provided to Plaintiffs Mark and Terri Louise Zirlott,  
2 such fees were identified as "Delinquency Expenses." Although some mortgage  
3 statements stated, "Delinquency expenses are third-party expenses such as property  
4 inspection fees, property preservation costs, appraisal costs, and attorneys fees incurred by  
5 CMI as a result of default," Citi did not adequately disclose the true nature of the fees  
6 assessed against the account of Plaintiffs Mark and Terri Louise Zirlott. Mortgage  
7 statements provided by Citi did not disclose that such fees may contain mark-ups, nor did  
8 they state exactly which of those categories of fees were assessed against the account of  
9 Plaintiffs Mark and Terri Louise Zirlott, and they did not state if the fees identified as  
10 "Delinquency Expenses" included more than one category of fee. Additionally, by  
11 merely stating, "such as," and giving a list of potential types of fees, Citi leaves borrowers  
12 unable to know if there are other categories of fees that are assessed under the  
13 "Delinquency Expenses" description.

14 72. Defendants alone maintain a complete accounting of all fees assessed and  
15 paid, and the details of each and every fee assessed and paid cannot be alleged with  
16 complete precision without access to Defendants' records. Nevertheless, Plaintiffs are  
17 informed and believe, and on that basis allege, that Plaintiffs Mark and Terri Louise  
18 Zirlott paid some or all of the unlawful fees assessed on their account

#### 19 **STATUTE OF LIMITATIONS**

20 73. Any applicable statutes of limitations have been tolled by Defendants'  
21 knowing and active concealment, denial, and misleading actions, as alleged herein.  
22 Plaintiffs and members of the Class, as defined below, were kept ignorant of critical  
23 information required for the prosecution of their claims, without any fault or lack of  
24 diligence on their part. Plaintiffs and members of the Class could not reasonably have  
25 discovered the true nature of the Defendants' marked-up fee scheme.

26 74. Defendants are under a continuous duty to disclose to Plaintiffs and members  
27 of the classes the true character, quality, and nature of the fees they assess on borrowers'  
28 accounts. Defendants knowingly, affirmatively, and actively concealed the true character,

1 quality, and nature of their assessment of marked-up fees against borrowers' accounts.  
2 Plaintiffs and members of the Class reasonably relied upon Defendants' knowing,  
3 affirmative, and active concealment. Based on the foregoing, Defendants are estopped  
4 from relying on any statutes of limitation as a defense in this action.

5 75. The causes of action alleged herein did or will only accrue upon discovery of  
6 the true nature of the charges assessed against borrowers' accounts, as a result of  
7 Defendants' fraudulent concealment of material facts. Plaintiffs and members of the  
8 Class did not discover, and could not have discovered, through the exercise of reasonable  
9 diligence, the true nature of the unlawful fees assessed against their accounts.

10 76. Legal scholars have explained that, as a result of these deceptive practices, it  
11 is impossible for borrowers to determine that they are victims of these violations, because  
12 "without a true itemization that identifies the nature of each fee, parties cannot verify that  
13 a mortgage claim is correctly calculated . . . the servicer could be overreaching and  
14 charging fees that are not permitted by law or by the terms of the contract. . . . By  
15 obscuring the information needed to determine the alleged basis for the charges, servicers  
16 thwart effective review of mortgage claims. The system can only function as intended if  
17 complete and appropriate disclosures are made."<sup>11</sup>

18 77. Additionally, judges examining similar conduct have found that, "[a]t the  
19 heart of the problem is [the loan servicer's] failure to disclose to its borrowers/debtors, the  
20 trustee, or the Court, the nature or amount of fees and charges assessed . . . [l]ack of  
21 disclosure facilitates the injury. Naive borrowers/debtors, trustees and creditors rightly  
22 assume that [the loan servicer] is complying with the plain meaning of its notes,  
23 mortgages, court orders and confirmed plans. Why would anyone assume otherwise? . . .  
24 How are they to challenge a practice or demand correction of an error they do not know  
25 exists."<sup>12</sup>

26 <sup>11</sup> See Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 Tex. L. Rev. 121,  
27 155 (2008).

28 <sup>12</sup> See *In re: Jones*, 418 B.R. 687, 699 (E.D. La. 2009).

## CLASS ACTION ALLEGATIONS

78. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a class action under Rule 23 of the Federal Rules of Civil Procedure.

79. The class Plaintiffs seek to represent (collectively, the “Class”) is defined as follows:

All residents of the United States of America who had a loan serviced by CitiMortgage and whose accounts were assessed fees for default-related services, including Broker’s Price Opinions, and inspection fees, at any time, continuing through the date of final disposition of this action.

80. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

81. Plaintiffs reserve the right to establish sub-classes as appropriate.

82. This action is brought and properly may be maintained as a class action under the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2) or (b)(3), and satisfies the requirements thereof. As used herein, the term “Class Members” shall mean and refer to the members of the Class.

83. Community of Interest: There is a well-defined community of interest among members of the Class, and the disposition of the claims of these members of the Class in a single action will provide substantial benefits to all parties and to the Court.

84. Numerosity: While the exact number of members of the Class is unknown to Plaintiffs at this time and can only be determined by appropriate discovery, membership in the Class is ascertainable based upon the records maintained by Defendants. At this time, Plaintiffs are informed and believe that the Class includes hundreds of thousands of members. Therefore, the Class is sufficiently numerous that joinder of all members of the Class in a single action is impracticable under Federal Rule of Civil Procedure Rule 23(a)(1), and the resolution of their claims through the procedure of a class action will be of benefit to the parties and the Court.



1       85. Ascertainability: Names and addresses of members of the Class are available  
2 from Defendants' records. Notice can be provided to the members of the Class through  
3 direct mailing, publication, or otherwise using techniques and a form of notice similar to  
4 those customarily used in consumer class actions arising under California state law and  
5 federal law.

6       86. Typicality: Plaintiffs' claims are typical of the claims of the other members  
7 of the Class which they seek to represent under Federal Rule of Civil Procedure 23(a)(3)  
8 because each Plaintiff and each member of the Class has been subjected to the same  
9 deceptive and improper practices and has been damaged in the same manner thereby.

10       87. Adequacy: Plaintiffs will fairly and adequately represent and protect the  
11 interests of the Class as required by Federal Rule of Civil Procedure Rule 23(a)(4).  
12 Plaintiffs are adequate representatives of the Class, because they have no interests which  
13 are adverse to the interests of the members of the Class. Plaintiffs are committed to the  
14 vigorous prosecution of this action and, to that end, Plaintiffs have retained counsel who  
15 are competent and experienced in handling class action litigation on behalf of consumers.

16       88. Superiority: A class action is superior to all other available methods of the  
17 fair and efficient adjudication of the claims asserted in this action under Federal Rule of  
18 Civil Procedure 23(b)(3) because:

19           (a) The expense and burden of individual litigation make it economically  
20               unfeasible for members of the Class to seek to redress their claims  
21               other than through the procedure of a class action.

22           (b) If separate actions were brought by individual members of the Class,  
23               the resulting duplicity of lawsuits would cause members to seek to  
24               redress their claims other than through the procedure of a class action;  
25               and

26           (c) Absent a class action, Defendants likely would retain the benefits of  
27               their wrongdoing, and there would be a failure of justice.

28       89. Common questions of law and fact exist as to the members of the Class, as

1 required by Federal Rule of Civil Procedure 23(a)(2), and predominate over any questions  
2 which affect individual members of the Class within the meaning of Federal Rule of Civil  
3 Procedure 23(b)(3).

4 90. The common questions of fact include, but are not limited to, the following:

- 5 (a) Whether Defendants engaged in unlawful, unfair, misleading, or  
6 deceptive business acts or practices in violation of California Business  
7 & Professions Code sections 17200 *et seq.*;
- 8 (b) Whether Defendants' practice of charging marked-up fees to  
9 borrowers, as alleged herein, is illegal;
- 10 (c) Whether Defendants were members of, or participants in the  
11 conspiracy alleged herein;
- 12 (d) Whether Defendants engaged in a pattern or practice of racketeering,  
13 as alleged herein;
- 14 (e) Whether documents and statements provided to Plaintiffs and  
15 members of the Class omitted material facts;
- 16 (f) Whether Plaintiffs and members of the class sustained damages, and if  
17 so, the appropriate measure of damages; and
- 18 (g) Whether Plaintiffs and members of the Class are entitled to an award  
19 of reasonable attorneys' fees, pre-judgment interest, and costs of this  
20 suit.

21 91. In the alternative, this action is certifiable under the provisions of Federal  
22 Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

- 23 (a) The prosecution of separate actions by individual members of the  
24 Class would create a risk of inconsistent or varying adjudications with  
25 respect to individual members of the Class which would establish  
26 incompatible standards of conduct for Defendants;
- 27 (b) The prosecution of separate actions by individual members of the  
28 Class would create a risk of adjudications as to them which would, as a

practical matter, be dispositive of the interests of the other members of the Class not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

- (c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole and necessitating that any such relief be extended to members of the Class on a mandatory, class-wide basis.

92. Plaintiffs are not aware of any difficulty which will be encountered in the management of this litigation which should preclude its maintenance as a class action

### **FIRST CAUSE OF ACTION**

#### **Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c))**

93. Plaintiffs incorporate by reference in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

94. Plaintiffs bring this cause of action on behalf of themselves and the members of the Class.

### **THE ENTERPRISE**

95. Defendants Citibank, N.A., and CitiMortgage, Inc. are each persons within the meaning of Title 18 United States Code section 1961(3).

96. At all relevant times, in violation of Title 18 United States Code section 1962(c), Citibank, N.A., CitiMortgage, Inc., including their directors, employees, and agents, along with their “property preservation” vendors – including Safeguard Real Estate Properties, LLC d/b/a of Safeguard Properties, LLC – and the real estate brokers who provide BPOs for Citi, conducted the affairs of an association-in-fact enterprise, as that term is defined in Title 18 United States Code section 1961(4) (the “Citi Enterprise”). The affairs of this enterprise affected interstate commerce through a pattern of

1 racketeering activity

2 97. The Citi Enterprise is an ongoing, continuing group or unit of persons and  
3 entities associated together for the common purpose of limiting costs and maximizing  
4 profits by fraudulently concealing assessments for unlawfully marked-up and/or  
5 unnecessary third party fees for default-related services on borrowers' accounts.

6 98. While the members of the Citi Enterprise participate in and are part of the  
7 enterprise, they also have an existence separate and distinct from the enterprise. The Citi  
8 Enterprise has a systematic linkage because there are contractual relationships,  
9 agreements, financial ties, and coordination of activities between Defendants, the real  
10 estate brokers who perform BPOs, and the vendors that perform property inspections.

11 99. Operating the Citi Enterprise according to policies and procedures developed  
12 and established by their executives, Citibank, N.A., and CitiMortgage, Inc. control and  
13 direct the affairs of the Citi Enterprise and use the other members of the Citi Enterprise as  
14 instrumentalities to carry out Citi's fraudulent scheme. These policies and procedures  
15 established by Citi's executives include providing statements that fail to disclose the true  
16 nature of the marked-up or unnecessary fees, cryptically identifying default-related  
17 service fees as "Delinquency Expenses," using mortgage loan management software  
18 designed to increase the fees assessed on borrowers' accounts, without consideration for  
19 whether the assessment of such fees is necessary under the circumstances, failing to  
20 provide borrowers with documentation to support assessments of fees for BPOs, and  
21 directing property preservation vendors to conduct services without consideration for  
22 whether they are necessary.



**THE PREDICATE ACTS**

100. Defendants' systematic schemes to fraudulently conceal assessments of unlawfully marked-up or unnecessary third party fees on the accounts of borrowers who have mortgage loans administered by CitiMortgage, Inc., as described above, was facilitated by the use of the United States Mail and wire. Defendants' schemes constitute "racketeering activity" within the meaning of Title 18 United States Code section 1961(1), as acts of mail and wire fraud, under Title 18 United States Code sections 1341 and 1343.

101. In violation of Title 18 United States Code sections 1341 and 1343, Defendants utilized the mail and wire in furtherance of their scheme to defraud borrowers whose loans are serviced by CitiMortgage by obtaining money from borrowers using false or fraudulent pretenses.

102. Through the mail and wire, the Defendants provided mortgage invoices, loan statements, payoff demands, or proofs of claims to borrowers, demanding that borrowers pay fraudulently concealed marked-up or unnecessary fees for default-related services, such as BPOs or property inspections. Defendants also accepted payments and engaged in other correspondence in furtherance of their scheme through the mail and wire.

103. Defendants fraudulently and unlawfully marked-up fees in violation of borrowers' mortgage agreements because the fees exceed the actual cost of the services, and therefore, they violate the disclosures made to borrowers.

104. The mortgage invoices, loan statements, or proofs of claims provided to borrowers fraudulently concealed the true nature of assessments made on borrowers' accounts. Using false pretenses, identifying the fees on mortgage invoices, loan statements, or proofs of claims only as "Delinquency Expenses" to obtain full payments from borrowers, Defendants disguised the true nature of these fees and omitted the fact that the fees include undisclosed mark-ups or were unnecessary. By omitting and fraudulently concealing the true nature of amounts purportedly owed in communications to borrowers, Defendants made false statements using the Internet, telephone, facsimile, United States mail, and other interstate commercial carriers.

1           105. Furthermore, to lull borrowers into a sense of trust, conceal Defendants'  
2 unlawful fees, and dissuade borrowers from challenging Defendants' unlawful fee  
3 assessments, Defendants further conceal their scheme from borrowers by telling them, in  
4 statements and other documents, that "Delinquency expenses are third-party expenses  
5 such as property inspection fees, property preservation costs, appraisal costs, and attorney  
6 fees incurred by CMI as a result of default," without disclosing that such fees may contain  
7 mark-ups, and by merely giving a list of potential types of fees without a true itemization,  
8 leaving borrowers unable to know the true nature of the fees that are assessed under the  
9 "Delinquency Expenses" description.

10           106. Defendants' omissions were material to Plaintiffs and the members of the  
11 Class. Had Defendants disclosed the true marked-up or unnecessary nature of the fees for  
12 default-related services, Plaintiffs would have been aware and would have challenged  
13 Defendants' unlawful fee assessments or they would not have paid them.

14           107. Each of these acts constituted an act of mail fraud for purposes of Title 18  
15 United States Code section 1341.

16           108. Additionally, using the Internet, telephone, and facsimile transmissions to  
17 fraudulently communicate false information about these fees to borrowers, to pursue and  
18 achieve their fraudulent scheme, Defendants engaged in repeated acts of wire fraud in  
19 violation of Title 18 United States Code section 1343.

20           109. In an effort to pursue their fraudulent scheme, Defendants knowingly  
21 fraudulently concealed or omitted material information from Plaintiffs and members of  
22 the Class. Defendants' knowledge that their activities were fraudulent and unlawful is  
23 evidenced by, among other things, the fact that they did not disclose the mark-ups or  
24 unnecessary nature of the fees in their communications to borrowers.

25           110. The predicate acts specified above constitute a "pattern of racketeering  
26 activity" within the meaning of Title 18 United States Code section 1961(5) in which  
27 Defendants have engaged under Title 18 United States Code section 1962(c).

28           111. All of the predicate acts of racketeering activity described herein are part of

the nexus of the affairs and functions of the Citi Enterprise racketeering enterprise. The racketeering acts committed by the Citi Enterprise employed a similar method, were related, with a similar purpose, and they involved similar participants, with a similar impact on the members of the Class. Because this case is brought on behalf of a class of similarly situated borrowers and there are numerous acts of mail and wire fraud that were used to carry out the scheme, it would be impracticable for Plaintiffs to plead all of the details of the scheme with particularity. Plaintiffs cannot plead the precise dates of all of Defendants' uses of the mail and wire because this information cannot be alleged without access to Defendants' records.

112. The pattern of racketeering activity is currently ongoing and open-ended, and threatens to continue indefinitely unless this Court enjoins the racketeering activity.

113. Numerous schemes have been completed involving repeated unlawful conduct that by its nature, projects into the future with a threat of repetition.

114. As a direct and proximate result of these violations of Title 18 United States Code sections 1962(c) and (d), Plaintiffs and members of the class have suffered substantial damages. Defendants are liable to Plaintiffs and members of the Class for treble damages, together with all costs of this action, plus reasonable attorney's fees, as provided under Title 18 United States Code section 1964(c).

## **SECOND CAUSE OF ACTION**

### **Violation of the Racketeer Influenced and Corrupt Organizations Act, Conspiracy to Violate Title 18 United States Code section 1962(c) (18 U.S.C. § 1962(d))**

115. Plaintiffs incorporate by reference in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

116. Plaintiffs bring this cause of action on behalf of themselves and the members of the Class.

117. As set forth above, in violation of Title 18 United States Code section

1 1962(d), defendants Citibank, N.A., and CitiMortgage, Inc. conspired to violate the  
2 provisions of Title 18 United States Code section 1962(c).

3 118. As set forth above, Defendants, having directed and controlled the affairs of  
4 the Citi Enterprise, were aware of the nature and scope of the enterprise's unlawful  
5 scheme, and they agreed to participate in it.

6 119. As a direct and proximate result, Plaintiffs and the members of the Class  
7 have been injured in their business or property by the predicate acts which make up  
8 Defendants' patterns of racketeering activity in that unlawfully marked-up and/or  
9 unnecessary fees for default-related services were assessed on their mortgage accounts.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **Unjust Enrichment**

12 120. Plaintiffs incorporate by reference in this cause of action each and every  
13 allegation of the preceding paragraphs, with the same force and effect as though fully set  
14 forth herein.

15 121. Plaintiffs bring this cause of action on behalf of themselves and the members  
16 of the Class.

17 122. By their wrongful acts and omissions of material facts, Defendants were  
18 unjustly enriched at the expense of Plaintiffs and members of the Class.

19 123. The mortgage contract with borrowers like Plaintiffs and the members of the  
20 Class discloses that Defendants will pay for default-related services when necessary, and  
21 they will be reimbursed by the borrower. Nowhere in the mortgage contract is it disclosed  
22 that Defendants may mark-up the actual cost of those services to make a profit, or that  
23 Defendants may incur unnecessary third party fees.

24 124. Nevertheless, Defendants mark-up the prices charged by vendors, often by  
25 100% or more, and then, without disclosing the mark-up, assess borrowers' accounts for  
26 the higher, marked-up fee so that Defendants can earn a profit. Additionally, as a policy,  
27 Defendants assess such fees on borrowers' accounts without adequate concern for whether  
28 they are necessary.



1 125. Thus, Plaintiffs and members of the Class were unjustly deprived.

2 126. Defendants are aware that it is improper to mark-up or assess unnecessary  
3 third party fees on borrowers' accounts for default-related services. Therefore,  
4 Defendants fraudulently conceal these fees on borrowers' accounts, omitting any  
5 information about Defendants' additional profits, by identifying them on mortgage  
6 statements only as "Delinquency Expenses."

7 127. Furthermore, to lull borrowers into a sense of trust, conceal Defendants'  
8 unlawful fees, and dissuade borrowers from challenging Defendants' unlawful fee  
9 assessments, Defendants further conceal their scheme from borrowers by telling them, in  
10 statements and other documents, that such fees are "Delinquency expenses are third-party  
11 expenses such as property inspection fees, property preservation costs, appraisal costs,  
12 and attorney fees incurred by CMI as a result of default," without disclosing that such fees  
13 may contain mark-ups, and by merely giving a list of potential types of fees without a true  
14 itemization, leaving borrowers unable to know the true nature of the fees that are assessed  
15 under the "Delinquency Expenses" description.

16 128. It would be inequitable and unconscionable for Defendants to retain the  
17 profit, benefit and other compensation they obtained from their fraudulent, deceptive, and  
18 misleading conduct alleged herein.

19 129. Plaintiffs and members of the Class seek restitution from Defendants, and  
20 seek an order of this Court disgorging all profits, benefits, and other compensation  
21 obtained by Defendants from their wrongful conduct.

#### 22 **FOURTH CAUSE OF ACTION**

##### 23 **Fraud**

24 130. Plaintiffs incorporate by reference in this cause of action each and every  
25 allegation of the preceding paragraphs, with the same force and effect as though fully set  
26 forth herein. Plaintiffs bring this cause of action on behalf of themselves and the  
27 members of the Class.

28 131. Defendants concealed and suppressed material facts, namely, the fact that



1 Defendants mark-up the prices charged by vendors, often by 100% or more, and then,  
2 without disclosing the mark-up, assess borrowers' accounts for the higher, marked-up fee  
3 so that Defendants can earn a profit. In truth and in fact, borrowers are not obligated to  
4 pay the amounts that have been specified in Defendants' communications for default-  
5 related services, such as BPOs. Contrary to Defendants' communications, Defendants are  
6 not legally authorized to assess and collect these fees.

7 132. Defendants omit a true itemization that identifies the nature of each fee, and  
8 they fail to disclose the nature of the charges and fees assessed. Defendants conceal the  
9 fact the category identified as "Delinquency Expenses" reflects marked-up and/or  
10 unnecessary fees that were never incurred by Defendants.

11 133. Plaintiffs relied their reasonable expectation that Defendants comply with the  
12 disclosures set forth in the mortgage agreement, Notes, and Security Instruments, and as a  
13 result, Plaintiffs relied on Defendants' disclosures about the fees on their statements,  
14 reasonably believing the "Delinquency Expenses" to be valid charges that were not  
15 unlawfully marked-up or unnecessary.

16 134. Indeed, to lull borrowers into a sense of trust and dissuade them from  
17 challenging Defendants' unlawful fee assessments, Defendants further conceal their  
18 scheme by telling borrowers, in statements and other documents, that such fees are  
19 "Delinquency expenses are third-party expenses such as property inspection fees, property  
20 preservation costs, appraisal costs, and attorney fees incurred by CMI as a result of  
21 default," without disclosing that such fees may contain mark-ups, and by merely giving a  
22 list of potential types of fees without an itemization, leaving borrowers unable to know the  
23 true nature of the fees that are assessed under the "Delinquency Expenses" description.

24 135. Had the true nature of the fees been disclosed to Plaintiffs and members of  
25 the Class, they would have been aware of the mark-ups, or unnecessary nature of the fees,  
26 and Plaintiffs would have disputed the charges and not paid them

27 136. Defendants knew their concealment and suppression of materials facts was  
28 false, misleading, and in violation of the disclosures made to borrowers because the fees

1 exceed the actual cost of the services.

2 137. As a result of Defendants' fraudulent omissions and failures to disclose,  
3 Plaintiffs and members of the Class have been injured in fact and suffered a loss of money  
4 or property. Plaintiffs and members of the Class would not have paid Defendants'  
5 fraudulently marked-up fees or they would have challenged the assessment of such fees  
6 on their accounts had it not been for Defendants' concealment of material facts.

7 138. Defendants omitted and concealed material facts, as discussed above ,with  
8 knowledge of the effect of concealing of these material facts. Defendants knew that by  
9 misleading consumers, they would generate higher profits.

10 139. Plaintiffs and members of the Class justifiably relied upon Defendants'  
11 knowing, affirmative, and active concealment. By concealing material information about  
12 their scheme to assess undisclosed marked-up fees on borrowers' accounts, Defendants  
13 intended to induce Plaintiffs and members of the Class into believing that they owed  
14 Defendants money that Defendants were not actually entitled.

15 140. Defendants acted with malice, oppression, or fraud.

16 141. As a direct and proximate result of Defendants' omissions and active  
17 concealment of material facts, Plaintiffs and each member of the Class has been damaged  
18 in an amount according to proof at trial.

### 19 **PRAYER FOR RELIEF**

20 Plaintiffs, and on behalf of themselves and all others similarly situated, request the  
21 Court to enter judgment against Defendants, as follows:

22 1. Certifying the Class, as requested herein, certifying Plaintiffs as the  
23 representatives of the Class, and appointing Plaintiffs' counsel as counsel for the Class;

24 2. Ordering that Defendants are financially responsible for notifying all  
25 members of the Class of the alleged omissions discussed herein;

26 3. Awarding Plaintiffs and the members of the Class compensatory damages in  
27 an amount according to proof at trial;

28 4. Awarding restitution and disgorgement of Defendants' revenues or profits to

1 Plaintiffs and members of the Class;

2 5. Awarding Plaintiffs and the members of the Class treble damages in an  
3 amount according to proof at trial;

4 6. Awarding declaratory and injunctive relief as permitted by law or equity,  
5 including: enjoining Defendants from continuing the unlawful practices as set forth  
6 herein, and directing Defendants to identify, with Court supervision, victims of its conduct  
7 and pay them restitution and disgorgement of all monies acquired by Defendants by  
8 means of any act or practice declared by this Court to be wrongful;

9 7. Ordering Defendants to engage in corrective advertising;

10 8. Awarding interest on the monies wrongfully obtained from the date of  
11 collection through the date of entry of judgment in this action;

12 9. Awarding attorneys' fees, expenses, and recoverable costs reasonably  
13 incurred in connection with the commencement and prosecution of this action; and

14 10. For such other and further relief as the Court deems just and proper.

15 Dated: July 24, 2012

16 BARON & BUDD, P.C.

17  
18 By: \_\_\_\_\_

19 Mark Pifko

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LOUISE ZIRLOTT, individually, and on  
behalf of other members of the public  
similarly situated

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: July 24, 2012

BARON & BUDD, P.C.

By: Mark Pifko

Daniel Alberstone (SBN 105275)  
Roland Tellis (SBN 186269)  
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